XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 505 OF 2004

S.B. - HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

Appellant — Banjubabu S/o Nogedara aged about 22 ycars R/O Chinchoor P/S Pandel Distt. Vishakhapatnam (A.P.)

Versus

Respondent — State of Chhattisgarh through p/s G.R.P. Raipur (C.G.)

5.11.2007

Shri Ratindra Mishra, counsel for the appellant.
Shri S.K. Mishra, P.L. for the State.

Heard on admission.

The appeal is admitted for hearing.

The matter is listed for hearing on M.Cr.P.No. 1461/2004, application for suspension of sentence and grant of bail. However, with the consent of the parties, the appeal is heard finally.

This appeal is directed against the judgment of conviction and order of sentence dated 9th February 2004 passed in Special Criminal Case No. 16/2003 whereby learned Special Court under N.D.P.S. Act Raipur has convicted the appellant under Section 20(b) ii (B) of the N.D.P.S. Act, 2001 (for brevity ' the Act') and sentenced him to undergo RI for two

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years, pay a fine of Rs.2000/- and in default to payment of fine to undergo additional RI for four months.

2. Case of the prosecution, in brief, is that on 11.3.2003 PW-4 S.N. Akhtar, S.H.O., G.R.P. Raipur received a secret information that a person is traveling in Vishakhapattanam-Korba Link Express carrying cannabis in a jute bag. After recording secret information the officer went to the platform and after arrival of the train at the platform, the person described in the information was found standing near S.T.D./P.C.O. Booth, who tried to escape after seeing the police. However, he was stopped by the police and after apprising him about the information and after giving personal search, his bag was searched, from which cannabis like substances were recovered. On preliminary examination the same were found to be cannabis and on weighment, it was found to be 4 kg. After taking out two samples of 50 gm each, the contraband was duly sealed and seizure memo was prepared. Thereafter, the First Information Report was registered. The contraband was stored in the *Malkhana* (godown) for safe custody and thereafter, information about the offence was sent to the superior officers and samples were sent for chemical examination to Forensic Science Laboratory, which confirmed that the seized contraband was cannabis. Thereafter, charge sheet was filed against the appellant.

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3. During trial the prosecution examined 5 witnesses in all. Thereafter, statement of the accused was recorded in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication. However, trial Court after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the accused/appellant submits that PW-3 Krishna Nishad, independent witness of notice under Section 50 of the Act (Ex.P/1), consent of the appellant (Ex.P/2), search memo given by the police party (Ex.P/3), weighment memo (Ex.P/4) and seizure memo of Ex.P/5, has turned hostile. Even the other witness Devanand Soni (PW-1) has not proved the documents of which he is signatory and he has simply stated that he put his signature on all the documents. The nature of information and name of the person by whom the information was received, has not been mentioned nor he has been examined as a witness and the trial Court has convicted the appellant solely on the basis of statement of S.N. Akhtar, investigating officer.

5. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

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6. I have heard learned counsel for the parties and have perused the material available on record including the impugned judgment.

7. PW-4 S.N. Akhtar, the investigating officer, has deposed that after receiving secret information the same was recorded by him and thereafter, recovery of the contraband was made from the possession of the appellant after apprising him about his legal right under the Act and after giving personal search by the raiding party, 4 kg of cannabis like substances were seized from the bag, which the appellant was carrying. The documents prepared during investigation were duly signed by witnesses Devanand Soni (PW-1) and Krishna Kumar Nishad (PW-3) and in their presence the recovery was made. The recovered article was examined and it was found to be cannabis, the sample of seized contraband was also forwarded to the superior authorities for sending the same to F.S.L. for chemical analysis and report of the F.S.L. is Ex.P/18. Defence has not been able to elicit anything in the cross-examination of this witness, which makes his evidence unreliable or untrustworthy and no any irregularity or non-compliance of any mandatory provisions of the Act has been pointed out in the cross-examination of this witness. The version of this witness is duly corroborated from the statement of Devanand Soni (PW-1), who is signatory of the documents of Ex.P/1 to

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P/5. He has stated that on the date of incident he had gone to Railway Station for seeing off his family, at that time a train came from Orissa side and the present appellant alighted from the train with some luggage. The appellant was apprehended by the police, he was brought near the S.T.D. Booth and there his luggage was searched and cannabis was found. It was weighed in his presence and thereafter, the cannabis was seized and his signatures were obtained. He has also admitted his signatures on the documents of Ex.P/1 to P/5. In his cross-examination by the defence he has stuck to his examination-in-chief and denied the suggestion that he is a pocket witness of the police.

8. The report of F.S.L. (Ex.P/18) mentions that sample of the contraband was received in a sealed condition and on examination, it was found to be cannabis. Thus, from the evidence available on record, the prosecution has established the charge against the appellant beyond reasonable doubt and the trial Court on the basis of above evidence has correctly convicted and sentenced the appellant under Section 20(b) ii (B) of the N.D.P.S. Act. There is no illegality or infirmity in the impugned judgment of trial Court.

9. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge

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